



In the Matter of the Appeal of)
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JOHN K. AND ELIZABETH K. JACOBS)

For Respondent: Esther Low
Counsel

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Appeal of John K. and Elizabeth K. Jacobs

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The sole issue is whether appellants were residents of California from October 21, 1980, through November 27, 1981.

For approximately twelve years before their move to Canada in 1980, appellants lived in San Francisco, California, where Mr. Jacobs worked as an engineer for Bechtel Power Corporation. In October 1980, Mr. Jacobs was given a temporary assignment by Bechtel to work from October 1980 through June 1981 as a process engineer for a client of Bechtel, Alsands Energy Limited, in Calgary, Alberta, Canada. Appellants then resided at 2555 Leavenworth Street, where they owned a cooperative interest in their apartment. Before leaving for Canada, they entered a written agreement to lease their furnished apartment for a term from November 1, 1980, through July 31, 1981.

On October 21, 1980, the Jacobs arrived in Canada. His paychecks during his assignment were issued by Bechtel Canada Limited. Mr. Jacobs' Canadian assignment was then extended through October 1981. Appellants' lease of their Leavenworth Street residence was extended orally until appellants returned. Mr. Jacobs' Canadian assignment was then extended again through the later part of November 1981. An initial Canadian employment authorization which allowed Mr. Jacobs to work in Canada until October 14, 1981, was extended for an additional two months to December 15, 1981. But appellants returned to California on November 27, 1981.

During the 13-month period when appellants were in Canada, they retained ownership of the apartment on Leavenworth Street, and they retained ownership of a rental house at 1287 Arguello Boulevard in San Francisco. Appellants retained checking and savings accounts in San Francisco but opened checking and savings accounts in Canada. Appellants retained valid California driver's licenses but registered their automobiles in Canada. Appellants remained registered voters in California for 1980 and 1981 but did not vote by absentee ballots in California elections during their stay in Canada. Appellants rented an apartment in Canada on a month-to-month basis and furnished it for the most part with rented furniture. During that 13-month stay, appellants returned once to the San Francisco Bay area to visit their adult daughters and to transact personal business. While in Canada, Mr. Jacobs received per diem from Bechtel.

Upon appellants' return to California in November 1981, they reoccupied their apartment on

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Leavenworth Street. Mr. Jacobs resumed his employment with Bechtel in San Francisco, where he remained until May 1982, when he retired. Mr. Jacobs has continued to work for Bechtel on a consultant basis since his retirement.

Based on information solicited by respondent and supplied by appellants, respondent determined that they were California residents for income tax purposes in 1980 and 1981 and on October 4, 1982, issued notices of proposed assessment recomputing appellants' tax liability accordingly. Respondent also proposed to make other adjustments on appellants' 1980 tax return, including a limit on capital losses, a reduction in taxes based on nontaxable trust income, and an addition of taxes based upon amounts received as interest and gain from the sale of investment property. Appellants protested the proposed assessment of additional taxes and interest. However, appellants did not specifically challenge any adjustments for 1980 other than the adjustments made based on the determination by respondent that appellants were California residents. On March 23, 1983, respondent affirmed the proposed assessments of additional taxes for 1980 and 1981. Appellants paid the assessments under protest and submitted this appeal.

Section 17041 of the Revenue and Taxation Code imposes a personal income tax on the entire taxable income of every resident of this state. Section 17014, subdivision (a), of the Revenue and Taxation Code defines "resident" to include:

(1) Every individual who is in this state for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

In addition, section 17014, subdivision (c), states that:

Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

California Administrative Code, title 18, regulation 17014, subdivision (c), provides that a domicile

is the place in which a man has voluntarily fixed the habitation of himself and family, not for a mere special or limited purpose, but with

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the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home.

This intention is not to be determined simply from the party's general statements. Rather, the acts and declarations of the parties are to be taken into consideration. (Estate of Phillips, 269 Cal.App.2d 656 [75 Cal.Rptr. 301] (1969); Appeal of Robert M. and Mildred Scott, Cal. St. Bd. of Equal., March 2, 1981.)

A person can only have one domicile at a time. For a person to establish a new domicile and so change his former domicile, he must take up actual, physical residence in a particular place with the intent to make that place his permanent abode. A union of act **and** intent is **essential**. Until such a union occurs, one retains his former domicile. One does not lose a former domicile by going to and stopping at another place for a limited time with no intention of making this other place his permanent abode. (Chapman v. Superior Court, 162 Cal.App.2d 421 [328 P.2d 23] (1958), 16 Cal.Jur.2d (rev.) Domicile, § 4, p. 764; 12 Cal.Jur.3d, Conflict of Laws, Summary p. 506.) The burden of proving the acquisition of a new domicile is on the person asserting that domicile has been changed. (Sheehan v. Scott, 145 Cal. 684 [79 P. 350] (1905).)

Indeed, appellants do not maintain that they changed domicile or that they intended to remain permanently in Calgary, and from the facts, it is apparent that they were California domiciliaries before they left and while they were absent. The question that remains, then, is whether they were absent from California for other than a temporary or transitory purpose.

Respondent's regulations explain that whether a taxpayer's purpose in entering or leaving California is temporary or transitory in **character** is essentially a question of fact to be determined by examining all the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b); Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) The regulations further explain that the underlying theory of California's definition of "resident" is that the state with which a person has the closest connections is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).)

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In accordance with these regulations, we have held that the connections which a taxpayer maintains with this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, business relationships, voting registration, possession of a local driver's license, and ownership of real property. (See, e.g., Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 3, 1971; Appeal of Arthur and Frances E. Horriqan, Cal. St. Bd. of Equal., July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal., July 6, 1971.)

An examination of the facts in this case leads to the conclusion that appellants' stay in Canada was for a temporary or transitory purpose. The stay was occasioned by an out-of-state work assignment for a specified term, which was later extended for specific and short additional terms. Appellants' living quarters in San Francisco were leased, first for a specific term ending at the time that Mr. Jacobs' original assignment to Canada was expected to end. That lease was later extended orally to end whenever appellants returned. Appellants retained California bank accounts, which would enable them to resume living in San Francisco without complication. The bank accounts and living quarters which they established in Canada were no more than would be convenient for a delimited stay. Finally, the fact that Mr. Jacobs was drawing per diem while in Canada suggests that appellant's stay was temporary. In short, we cannot find any evidence that appellants abandoned their California contacts in favor of comparable Canadian contacts which would indicate that their stay in Canada was other than for a temporary or transitory purpose.

Accordingly, we must conclude that appellants remained California residents, and we must sustain respondent's actions.

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O R D E R

Pursuant to the views expressed in the opinion,
of the board on file in this-proceeding, and good cause
appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims. of John K. and Elizabeth K. Jacobs for refund of personal income tax in the amounts of \$1,808 a-nd \$5,962 for the years 1980 and 1981, respectively, be and the same. is hereby sustained.

Done, at Sacramento, California:, this 27th day
of June , 1984, by the State Board of Equalization,
with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis
and Mr. Bennett present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
	, Member